

REMARKS

Claims 1-24 are all the claims pending in the application, claims 21-24 being previously added. Claims 1, 8, 14, 21, and 24 are the only independent claims.

Claims 1, 3-9, and 11-19, 21, and 23-24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Skelley (U.S. 6,795,638) in view of newly cited Middleton (U.S. Pub. 2002/0118300). Claims 2, 10, and 20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Skelley in view of Middleton and Escobar (U.S. 5,659,793). Claim 22 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Skelley in view of Middleton and further in view of Official Notice. Applicant respectfully traverses these rejections, and requests reconsideration and allowance of the pending claims in view of the following arguments.

Applicant submits that the conception date of the present application predates the earliest priority date of the newly cited Middleton reference. In particular, the Office Action utilizes Middleton as a § 102(e) reference, within the context of the § 103(a) rejection. Accordingly, the earliest priority date of Middleton is the U.S. filing date of May 1, 2001, since the foreign filing date is not considered in a § 102(e) reference.

Applicant submits a new affidavit. 37 CFR 1.116 states that an affidavit or other evidence submitted after a final rejection or other final action in an application may be admitted upon a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. Applicant respectfully submits that an affidavit was filed on June 28, 2007, however the affidavit did not specifically state that Korea was a WTO Member Country. Additionally, the affidavit did not specifically state mention that the affidavit was made by the assignee because the inventor was not available to produce the affidavit. Applicant submits a new affidavit in response to the Examiner's remarks on page 2 of the Office Action.

Applicant submits herewith a declaration of Mr. Gi-Up Cho pursuant to 37 CFR § 1.131. The declaration supports a conception date of the present application prior to the May 1, 2001, priority date of Middleton. The declaration further establishes diligent pursuit of the filing of the present application, resulting in a constructive reduction to practice of the subject matter disclosed, and claimed, on December 30, 1999.

In response to the Office Action, Applicant submits that Korea has been a WTO Member Country since January 1, 1995. Additionally, Applicant submits at this time, the inventor Eun Kim is unavailable to produce this affidavit, reasonable efforts were made to locate the inventor. Additionally, Applicant submits that 37 CFR 1.131(b) provides three methods in which an applicant can establish prior invention of the claimed subject matter. The showing of facts must be sufficient show (1) reduction to practice prior to the effective date of the reference, (2) conception of the invention prior to the effective date of the reference coupled with the due diligence from prior to the reference date to a subsequent reduction to practice, or (3) conception of the invention prior to the effective date of the reference coupled with the due diligence from prior to said date to the filing of the application.

Applicant has submitted an affidavit arguing that the act of filing Korean patent application No. 10-1999-00673355 (December 30, 1999) constitutes a conception date of the present application. MPEP 2138.05 states that "Reduction to practice may be an actual reduction or a constructive reduction to practice which occurs when a patent application on the claimed invention is filed. The filing of a patent application serves as conception and constructive reduction to practice of the subject matter described in the application. Thus the inventor need not provide evidence of either conception or actual reduction to practice when relying on the

content of the patent application.” *Hyatt v. Boone*, 146 F.3d 1348, 1352, 47 USPQ2d 1128, 1130 (Fed. Cir. 1998).

As such, Applicant respectfully submits that the December 30, 1999 filing of Korean application No. 10-1999-00673355 serves as a reduction to practice. Accordingly, Applicant submits that the Middleton reference should properly be withdrawn. Applicant further submits that none of the other cited art of record teach or suggest the features for which Middleton is relied upon in the present Action. Since Middleton has been used in the rejection of all claims 1-24, withdrawal of the rejection to these claims is believed proper and is respectfully requested.

CONCLUSION

In light of the above remarks, Applicant submits that the present Response places all claims of the present application in condition for allowance. Reconsideration of the application is requested.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Los Angeles, California, telephone number (213) 623-2221 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,

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